THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22134 OF 1997

27.07.2006

Between:

B.Sitaram Reddy, S/o.Bheem Reddy
And others

… Petitioners

AND

The Joint Collector, Mahabubnagar
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22134 OF 1997

ORDER:

The petitioners purchased land admeasuring various extents comprised in survey Nos.38, 43, 51 and 59 situated at Palwai Village of Maldakal Mandal in Mahabubnagar District. After allegedly taking permission from the Tahsildar under Section 47 of A.P. (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (the Act, for brevity), their names were also entered in Khasra Pahani for 1954-1955. In 1981, the predecessors of respondents 3 and 4 filed an application under Regulation 15(2) of A.P. (Telangana Area) Record of Rights in Land and Regulations 1358 Fasli (RoR Regulations). The second respondent, who conducted enquiry into the said application, by order dated 20.3.1991 directed to record the names of Golla Sanjanna and Golla Laxmadu on the ground that their names are mentioned in column No.11 of pahani. The petitioners, therefore, filed a revision petition under Section 9 of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (RoR Act, for brevity) before the first respondent, who by an order dated 23.9.1997 rejected the revision on the ground that against an order passed by the second respondent under RoR Regulations, revision would not lie, as such an order was passed in the capacity of District Collector. Feeling aggrieved by the same, the present writ petition is filed.

The respondents 1 and 2 have filed counter affidavits. A reference is made to Government Memo No.1616-N1/81-3 Revenue (N) Department dated 21.11.1981. It is stated that as per the said memo, fresh cases of complaints about wrong entries made in the pahanies under Regulation 15(2) of RoR Regulations prior to 15.8.1978 (on which date RoR Act came into force) can be instituted and investigated under RoR Regulations. Though notices are served on respondents 3 and 4 and are represented by Sri M.V.S.Suresh Kumar, no counter affidavit is filed.

Learned Counsel for the petitioners raised three contentions. First, he would urge that by reason of Section 13 of RoR Act, RoR Regulations are totally repealed and, therefore, the order of the District Revenue Officer, Mahabubnagar (DRO); second respondent herein, is without jurisdiction. Secondly, he would urge that though Regulation

15 of RoR Regulations does not prescribe any time limit, *suo motu* powers conferred by the said provision has to be exercised within a reasonable time. According to the learned Counsel, when the names of the petitioners were entered in Khasra Pahani for 1954-1955, it was improper for the second respondent to have ordered for correction after lapse of about thirty-six years. Lastly, it is urged that the Joint Collector ought to have exercised power under Section 9 of RoR Act, as the order of the DRO would affect the rights of the petitioners. The learned Assistant Government Pleader placed reliance on the Government memo dated 21.11.1981 in support of the contention that even after coming into force of the RoR Act still DRO can exercise jurisdiction under Regulation 5 of RoR Regulations. Learned Counsel for respondents 3 and 4 submits that the first petitioner and another filed suit being O.S.No.43 of 1971 on the file of the Court of Subordinate Judge, Gadwal, for declaration of title and for correction of names in record of rights, that petitioners 4 and 5 filed O.S.No.51 of 1997 on the file of the Court of District Munsif, Gadwal, for injunction, and that petitioners 6 to 9 filed O.S.No.66 of 1997 whereas petitioner No.10 has filed O.S.No.61 of 1997 on the file of the Court of the District Munsif, Gadwal and, therefore, this writ petition is not maintainable. He also submits that by reason of the proviso to Section 13 of the RoR Act, jurisdiction of the DRO to entertain applications under Regulation 15(2) of RoR Regulations is not taken away.

In support of the first submission, learned Counsel for the petitioners has placed reliance on an unreported judgment of this Court in W.P.No.9340 of 1991 dated 21.2.1997. In the said case, the petitioners filed an application under Regulation 15(2) of RoR Regulations before the DRO. When the same was rejected, the petitioners approached this Court. This Court considered the jurisdiction of the DRO to entertain applications under Regulation 15(2) of RoR Regulations. Having noticed that the said Regulation stood repealed by the RoR Act, this Court held that DRO has no jurisdiction to entertain an application under Regulation 15(2) of repealed RoR Regulations and that the person seeking correction of entries in the record of rights has to approach appropriate recording authority under RoR Act. It is also brought to the notice of this Court that the order of the learned Single Judge has been confirmed by a Division Bench of this Court. Therefore, the order passed by the DRO on 20.3.1991 at the instance of respondents 3 and 4 is without

jurisdiction and cannot be sustained.

In view of the finding on the first question, it is not necessary to go into the second question regarding the justification on the part of the DRO to entertain an application under Regulation 15(2) of RoR Regulations, after long lapse of thirty-six (36) years.

It remains to be seen whether under Section 9 of RoR Act, it is competent for the Joint Collector to entertain the revision against an order passed under RoR Regulations. Section 9 of RoR Act reads as under.

> **9. Revision**:- The Collector may either *suo motu* or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5A or 5B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly:
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> Provided that no such order adversely affecting any person shall be passed under this section unless he had an opportunity of making a representation.

The Collector (Joint Collector) is revisional authority, who is competent to call for and examine the record of any recording authority, MRO or RDO under Sections 3, 5, 5A or 5B, in respect of any record of rights prepared or maintained, to satisfy himself as to the regularity, correctness or propriety of any decision taken, order passed or proceeding made in respect thereof and modify or annul or reverse or remit for reconsideration. Having regard to the punctuation (comma) used after the words "… … the record of any recording authority," and the punctuation used after the words and figures "… … under Sections 3, 5, 5A or 5B," it is reasonable to infer that the Collector is the Revisional Authority against any order of any recording authority in respect of any record of rights. Such power is not necessarily restricted to orders passed by MRO and RDO under Sections 3, 5, 5A or 5B of RoR Act. Indeed, a reference to Rule 13(2) of A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (the Rules, for brevity) would show that the power is conferred on MRO, RDO, Deputy Collector, DRO or any Officer designated by the Collector to revise the

entries in confirmed record of rights subject to certain conditions. Having regard to this, if Section 9 of the Act is interpreted in a restricted manner, there would not be any revision against an order passed under Rule 13(2) of the Rules by DRO, Deputy Collector or any Officer designated by Collector and such revision would be maintainable only against orders of MRO or RDO in the event of these officers passing orders under Sections 3, 5, 5A or 5B of RoR Act. Therefore, such restricted interpretation is not permissible.

In this case, the DRO has passed orders under Regulation 15(2) of RoR Regulations directing to record the names of Golla Sanjanna and Golla Laxmadu in columns 13 and 14 of Khasra Pahani. The same was done without any jurisdiction under a repealed provision and, therefore, nothing prevents the Joint Collector to exercise his power under Section 9 of RoR Act. In that view of the matter, the first respondent committed an error in rejecting the revision of the petitioners on an erroneous assumption.

In the result, the writ petition is allowed. The orders of the first respondent and second respondent are set aside. If the respondents 3 and 4 are aggrieved by the entries made in favour of the petitioners, it shall be open to them to approach appropriate authorities under RoR Act and RoR Regulations. There shall be no order as to costs.

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(**V.V.S.RAO, J**)

July 27, 2006

NOTE:

L.R.Copy be marked.

(By order)

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